tapes did furnish leads for the prosecution. Under *Kolod* v. *United States*, 390 U.S. 136 (1968), the Government plainly is not permitted to make an *ex parte* determination that they did not furnish leads. Yet the concluding sentence of the Government's Brief, quoted above, is an attempt to do just that.

Petitioner does not ask this Court to find as a matter of fact that the tapes did taint the prosecution. In the absence of an evidentiary record on this point below, such a finding can neither be made nor precluded in the present posture of the case. Petitioner therefore asks, with respect to this aspect of the case,[8] that certiorari be granted and an adversary hearing on remand be ordered in accordance with the requirements of *Alderman* v. *United States* for determining the issue of taint.

Respectfully submitted,

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[8] In the event that the case is remanded for a new trial as a result of a grant of certiorari and decision favorable to petitioner on other questions presented in the Petition, then petitioner can obtain the necessary hearing on taint by renewing, prior to retrial, his pretrial motion to suppress these tapes in the District Court.